

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL DESJARLAIS,

Plaintiff.

V.

**COMMISSIONER OF SOCIAL
SECURITY,**

Defendant.

NO: 1:16-CV-3091-RMP

**ORDER GRANTING PLAINTIFF'S
AND DENYING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

BEFORE THE COURT are cross-motions for summary judgment from

Plaintiff Michael DesJarlais, **ECF No. 13**, and the Commissioner of Social Security (the “Commissioner”), **ECF No. 18**. Mr. DesJarlais sought judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner’s denial of his claims for disability insurance benefits under Title II of the Social Security Act (the “Act”) and supplemental security income under Title XVI of the Act. The Court has reviewed the parties’ briefing, the administrative record, the relevant law, and is fully informed. The Court concludes that the Commissioner’s decision did not refer to clear and convincing reasons to discredit Mr. DesJarlais’s symptom

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1 testimony and to discount the opinion of his treating physician, and, therefore,
2 **grants** Plaintiff's motion for summary judgment, **ECF No. 13**, and denies the
3 Commissioner's cross-motion, **ECF No. 19**.

4 **BACKGROUND**

5 **A. Mr. DesJarlais's Claim for Benefits and Procedural History**

6 Mr. DesJarlais applied for disability insurance benefits in November 2010,
7 alleging that he had become disabled on November 20, 2007, when he was 46
8 years old. Administrative Record ("AR") 190–92.¹ Plaintiff also protectively
9 sought supplemental security income, through an application filed at or around the
10 same time. Plaintiff listed the following conditions that limited his ability to work
11 at the time: back and leg/knee conditions. AR 83. Mr. DesJarlais had at least a
12 high school education and was able to communicate in English. AR 45, 649. He
13 had past relevant work experience as an asphalt paving machine operator, a plant
14 operator, a construction worker, and materials inspector.

15 The parties do not dispute that Mr. DesJarlais was under "insured status"
16 until December 31, 2009, meaning that Mr. DesJarlais must establish that he
17 became disabled prior to the expiration of that status to secure the disability
18 insurance benefits he seeks. *See* 42 U.S.C. § 423(a), (c), (d).

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¹ The AR is filed at ECF No. 10.

1 The Commissioner denied Mr. DesJarlais's claims initially and on
2 reconsideration. Mr. DesJarlais consequently requested a hearing, which was held
3 before an Administrative Law Judge ("ALJ"), Ilene Sloan, on December 19, 2012.
4 The parties appealed the ALJ's January 2013 decision finding Mr. DesJarlais not
5 disabled. The appeal was received by this District; however, Judge Robert H.
6 Whaley remanded the case to the Commissioner for a second hearing upon the
7 stipulation of the parties in July 2015. On January 25, 2016, ALJ Sloan held a
8 hearing by video conference from Seattle, Washington, with Mr. DesJarlais
9 participating from Yakima, Washington.

10 **B. January 25, 2016 Hearing**

11 Mr. DesJarlais was injured in a motorcycle accident on July 28, 2014.
12 Therefore, the ALJ heard new evidence regarding those injuries and the resulting
13 surgeries and other medical treatment that Mr. DesJarlais received. The ALJ also
14 heard new testimony from Mr. DesJarlais and supplemented the record regarding
15 Mr. DesJarlais's condition throughout the period in which he contends that he has
16 been debilitated. The ALJ adopted her credibility analysis from her January 25,
17 2013 decision with respect to the level of impairment experienced by Mr.
18 DesJarlais from his ailments.

19 **C. ALJ's Decision**

20 On March 18, 2016, the ALJ issued a partially favorable decision finding
21 Mr. DesJarlais disabled after July 28, 2014, but not disabled prior to that date. The
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1 ALJ undertook the five-step disability evaluation process, outlined below, and the
2 Court summarizes the ALJ's findings as follows:

3 **Step one:** Mr. DesJarlais has engaged in substantial gainful activity since his
4 alleged onset date, doing dump truck driving work in 2013 and office work
5 in 2014.

6 **Step two:** Since November 20, 2007, Mr. DesJarlais has had the following
7 severe impairments: cervical degenerative disc disease; lumbar degenerative
8 disc disease, status post laminectomy; degenerative changes, right knee; and
9 left knee arthritis, status post left knee surgery in August 2011. The ALJ
10 found that Mr. DesJarlais had demonstrated additional severe impairments
11 after July 28, 2014, in the form of his physical state post hip/pelvis fracture
12 and post lumbar fusion surgery. AR 620.

13 **Step three:** Mr. DesJarlais does not have an impairment or combination of
14 impairments that meets or medically equals one of the listed impairments in
15 20 C.F.R. Part 404, Subpart P, Appendix 1.

16 **Residual Functional Capacity (“RFC”):** During the period between Mr.
17 DesJarlais's claimed onset of disability, November 2007, until July 28,
18 2014, Mr. DesJarlais was able to perform “light work as defined in 20 CFR
19 404.1567(b) and 416.967(b) except he could occasionally climb ramps and

1 stairs, and could never climb ladders, ropes, or scaffolds.”² AR 621. The
2 ALJ also found that Mr. DesJarlais had unlimited balance and could
3 frequently stoop, and could occasionally kneel, crouch, and crawl.
4 The ALJ further found that, beginning on July 28, 2014, Mr. DesJarlais
5 retained the residual functional capacity “to perform sedentary work as
6 defined in 20 C.F.R. § 404.1567(a) and 20 C.F.R. § 416.967(a) except that he can only
7 occasionally climb ramps and stairs and can never climb ladders, ropes, or
8 scaffolds. He has unlimited balance and frequent stooping, occasional

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12 ² “Light work” is defined in 20 C.F.R. § 404.1567(b) and 20 C.F.R. § 416.967(b)
13 as “lifting no more than 20 pounds at a time with frequent lifting or carrying of
14 objects weighing up to 10 pounds. Even though the weight lifted may be very
15 little, a job is in this category when it requires a good deal of walking or standing,
16 or when it involves sitting most of the time with some pushing and pulling of arm
17 or leg controls. To be considered capable of performing a full or wide range of
18 light work, you must have the ability to do substantially all of these activities. If
19 someone can do light work, we determine that he or she can also do sedentary
20 work, unless there are additional limiting factors such as loss of fine dexterity or
21 inability to sit for long periods of time.”

1 kneeling, crouching, and crawling. The claimant should avoid concentrated
2 exposure to vibration.”³ AR 628–29.

3 **Step four:** Since November 20, 2007, Mr. DesJarlais has been unable to
4 perform any past relevant work. Beginning on July 28, 2014, the claimant
5 has not been able to transfer job skills to other occupations.

6 **Step five:** Mr. DesJarlais was not disabled prior to July 28, 2014, including
7 through December 31, 2009, when Mr. DesJarlais was last insured for
8 purposes of securing disability insurance benefits. However, Mr. DesJarlais
9 became disabled on July 28, 2014, and continued to be disabled through the
10 date of the ALJ’s decision.

11 Mr. DesJarlais requested review of the ALJ’s decision by the Appeals
12 Council. When the Appeals Council denied review, the ALJ’s ruling became the
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15 ³ “Sedentary work,” as defined in 20 C.F.R. § 404.1567(a) and 20 C.F.R. §
16 416.967(a), “involves lifting no more than 10 pounds at a time and occasionally
17 lifting or carrying articles like docket files, ledgers, and small tools. Although a
18 sedentary job is defined as one which involves sitting, a certain amount of walking
19 and standing is often necessary in carrying out job duties. Jobs are sedentary if
20 walking and standing are required occasionally and other sedentary criteria are
21 met.”

1 final decision of the Commissioner and appealable to this Court under 42 U.S.C. §
2 405(g).

3 **APPLICABLE LEGAL STANDARDS**

4 **A. Standard of Review**

5 Congress has provided a limited scope of judicial review of a Commissioner’s
6 decision. 42 U.S.C. § 405(g). A court may set aside the Commissioner’s denial of
7 benefits only if the ALJ’s determination was based on legal error or not supported by
8 substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985) (citing
9 42 U.S.C. § 405(g)). “The [Commissioner’s] determination that a claimant is not
10 disabled will be upheld if the findings of fact are supported by substantial evidence.”

11 *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)).

12 Substantial evidence is more than a mere scintilla, but less than a preponderance.

13 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975); *McCallister v.*
14 *Sullivan*, 888 F.2d 599, 601–02 (9th Cir. 1989). Substantial evidence “means such
15 evidence as a reasonable mind might accept as adequate to support a conclusion.”

16 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citations omitted). “[S]uch

17 inferences and conclusions as the [Commissioner] may reasonably draw from the

18 evidence” will also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir.

19 1965). On review, the court considers the record as a whole, not just the evidence

20 supporting the decisions of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20,

21 22 (9th Cir. 1989) (quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

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1 It is the role of the trier of fact, not the reviewing court, to resolve conflicts in
2 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
3 interpretation, the court may not substitute its judgment for that of the
4 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th
5 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be
6 set aside if the proper legal standards were not applied in weighing the evidence and
7 making a decision. *Brawner v. Sec'y of Health and Human Services*, 839 F.2d 432,
8 433 (9th Cir. 1988). Thus, if there is substantial evidence to support the
9 administrative findings, or if there is conflicting evidence that will support a finding
10 of either disability or nondisability, the finding of the Commissioner is conclusive.
11 *Sprague v. Bowen*, 812 F.2d 1226, 1229–30 (9th Cir. 1987).

12 **B. Definition of Disability**

13 The Social Security Act defines “disability” as the “inability to engage in any
14 substantial gainful activity by reason of any medically determinable physical or
15 mental impairment which can be expected to result in death or which has lasted or
16 can be expected to last for a continuous period of not less than 12 months.” 42
17 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a Plaintiff shall
18 be determined to be under a disability only if his impairments are of such severity
19 that Plaintiff is not only unable to do his previous work but cannot, considering
20 Plaintiff’s age, education, and work experiences, engage in any other substantial
21 gainful work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),

1 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and
2 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

3 **C. Sequential Process**

4 The Commissioner has established a five-step sequential evaluation process
5 for determining whether a claimant is disabled. 20 C.F.R. § 416.920. Step one
6 determines if he is engaged in substantial gainful activities. If the claimant is
7 engaged in substantial gainful activities, benefits are denied. 20 C.F.R. §§
8 404.1520(a)(4)(i), 416.920(a)(4)(i).

9 If the claimant is not engaged in substantial gainful activities, the decision
10 maker proceeds to step two and determines whether the claimant has a medically
11 severe impairment or combination of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii),
12 416.920(a)(4)(ii). If the claimant does not have a severe impairment or combination
13 of impairments, the disability claim is denied.

14 If the impairment is severe, the evaluation proceeds to the third step, which
15 compares the claimant's impairment with a number of listed impairments
16 acknowledged by the Commissioner to be so severe as to preclude substantial
17 gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii); *see also* 20
18 C.F.R. § 404, Subpt. P, App. 1. If the impairment meets or equals one of the listed
19 impairments, the claimant is conclusively presumed to be disabled.

20 If the impairment is not one conclusively presumed to be disabling, the
21 evaluation proceeds to the fourth step, which determines whether the impairment

1 prevents the claimant from performing work he has performed in the past. If the
2 plaintiff is able to perform his previous work, the claimant is not disabled. 20 C.F.R.
3 §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant's RFC
4 assessment is considered.

5 If the claimant cannot perform this work, the fifth and final step in the process
6 determines whether the claimant is able to perform other work in the national
7 economy in view of his residual functional capacity and age, education and past
8 work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v.*
9 *Yuckert*, 482 U.S. 137 (1987).

10 The initial burden of proof rests upon the claimant to establish a *prima facie*
11 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
12 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
13 is met once the claimant establishes that a physical or mental impairment prevents
14 her from engaging in her previous occupation. The burden then shifts, at step five,
15 to the Commissioner to show that (1) the claimant can perform other substantial
16 gainful activity, and (2) a "significant number of jobs exist in the national economy"
17 which the claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir.
18 1984).

19 **D. Treating Physician Rule**

20 The treating physician rule requires that an ALJ give the medical opinion of a
21 claimant's treating physician controlling weight if it is well supported by medical

1 findings and not inconsistent with other substantial record evidence. 20 C.F.R. §
2 404.1527(c)(2). Although the Commissioner has eliminated the treating physician
3 rule for claims filed on or after March 27, 2017, 82 Fed. Reg. 5852-53, the rule
4 applies to Mr. DesJarlais's claim filed in November 2010. AR 190-92.

5 With respect to claims filed before March 27, 2017, the Ninth Circuit weighs
6 medical opinion evidence according to the following hierarchy:

7 Cases in this circuit distinguish among the opinions of three types of
8 physicians: (1) those who treat the claimant (treating physicians); (2)
9 those who examine but do not treat the claimant (examining
10 physicians); and (3) those who neither examine nor treat the claimant
11 (nonexamining physicians). As a general rule, more weight should be
12 given to the opinions of a treating source than to the opinion of doctors
13 who do not treat the claimant.

14 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995).

15 The Commissioner may decline to give the claimant's treating physician
16 controlling weight, only for "clear and convincing reasons" if the treating
17 physician's opinion is not contradicted by another doctor, or for "specific and
18 legitimate reasons" supported by substantial evidence in the record, where the
19 treating physician's opinion is contradicted by another doctor. *Lester*, 81 F.3d at
20 831. In addition, "the ALJ need not accept the opinion of any physician, including a
21 treating physician, if that opinion is brief, conclusory, and inadequately supported by
clinical findings." *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th
Cir. 2009) (citation and alteration omitted).

ISSUES ON APPEAL

A. Whether the ALJ erred in weighing the medical opinion evidence

B. Whether the ALJ erred in rejecting Plaintiff's symptom testimony based on an adverse credibility finding

C. Whether, if the Court finds legal error, the Court should remand or reverse and award benefits

DISCUSSION

A. Whether the ALJ erred in weighing the medical opinion evidence

9 Plaintiff argues that the ALJ did not give specific and legitimate reasons to
10 discount the opinion of Plaintiff’s treating physician from October 2012 until
11 February 2016, Dr. Caryn Jackson. *See* AR 1241 (updated March 2016 opinion of
12 Dr. Jackson providing dates of treatment). Plaintiff also argues that the ALJ’s
13 conclusions that Dr. Jackson had only seen Mr. DesJarlais on a single occasion were
14 not based on substantial evidence in the record. Finally, Mr. DesJarlais maintains
15 that if Dr. Jackson’s full opinion were credited as true, in generating Mr.
16 DesJarlais’s RFC, it would support that Mr. DesJarlais, even before July 28, 2014,
17 could not adjust to other work because he was unable to do the full range of
18 sedentary work, thus compelling a finding of disability. *See* SSR 96-9, 1996 SSR
19 LEXIS 6.

20 The Commissioner responds that Dr. Jackson's findings are contradicted by
21 other medical evidence in the record and based on limited objective findings.

1 “[T]he Commissioner must provide ‘clear and convincing’ reasons for
2 rejecting the uncontradicted opinion of an examining physician.” *Lester*, 81 F.3d at
3 830 (9th Cir. 1995). If controverted, “the opinion of an examining doctor . . . can
4 only be rejected for specific and legitimate reasons that are supported by substantial
5 evidence in the record.” *Id.* at 830–31.

6 Dr. Jackson gave an opinion on May 16, 2014, that Mr. DesJarlais’s diagnoses
7 of severe spinal stenosis with radiculopathy and bilateral knee pain would result in a
8 severely limited capacity to engage in regular work and an inability to meet the
9 demands of sedentary work. AR 920–21. Following Mr. DesJarlais’s back surgery
10 in 2015, Dr. Jackson gave a supplemental opinion regarding Mr. DesJarlais’s
11 functional abilities. AR 945–49. Dr. Jackson again opined that Mr. DesJarlais’s
12 impairment severely limited his capacity to perform regular work. AR 946.

13 On appeal, Mr. DesJarlais supplemented the record with a March 2016
14 opinion from Dr. Jackson opining that: work would result in further deterioration of
15 Mr. DesJarlais’s condition; Mr. DesJarlais likely would miss four or more days of
16 work per month; and Mr. DesJarlais has been severely limited in his ability to work
17 since at least January 2010. AR 1241–43.

18 The Court agrees with Plaintiff that the reasons offered for discounting Dr.
19 Jackson’s opinion regarding the level of work he could perform are not supported by
20 substantial evidence in the record. First, the record firmly supports that Dr. Jackson
21 was familiar with Mr. DesJarlais’s treatment history and had seen Mr. DesJarlais on

1 more than one occasion, contrary to the ALJ's finding. *Compare* AR 628 (ALJ's
2 finding that "Dr. Jackson worked at the clinic where the claimant received treatment,
3 but it is unclear if she saw the claimant on more than a single occasion.") *with* AR
4 427–30 (office visit record from Oct. 8, 2012); 864–65 (test results copied to Dr.
5 Jackson); 924–25 (office visit record from Apr. 28, 2014); 937–43 (office visit
6 record from Aug. 4, 2015); 1065 (Jul. 31, 2014 hospital record referring to Mr.
7 DesJarlais as being a patient of Dr. Jackson). Moreover, the findings regarding the
8 functional limitations resulting from Plaintiff's degenerative arthritis, in his spine
9 and knee, are not inconsistent with the findings of the other doctors cited by the ALJ
10 because those doctors did not review Plaintiff's physical abilities and limitations
11 cumulatively nor opine as to the level of work that Plaintiff was able to perform.
12 *See* AR 1205–06 (assessment and treatment plan of Dr. Michael Chang regarding
13 Mr. DesJarlais's lower back pain); 1208–10 (assessment and treatment plan of Dr.
14 Todd Orvald regarding Mr. DesJarlais's knee pain).

15 The Court does not find clear and convincing or specific and legitimate
16 reasons to have devalued Dr. Jackson's opinion. Therefore, the ALJ erred in
17 rejecting Dr. Jackson's opinion in favor of state agency consultants Drs. Howard
18 Platter and Wayne Hurley who concluded in 2011 that Mr. DesJarlais could perform
19 light work.

20 Although the parties discuss the propriety of the weight accorded by the ALJ
21 to other medical opinions in the record, the Court does not address Plaintiff's

1 challenges to those opinions because it has already found error regarding Dr.
2 Jackson's opinion.

3 **B. Whether the ALJ erred in rejecting Plaintiff's symptom testimony
4 based on an adverse credibility finding**

5 Mr. DesJarlais argues that the ALJ's reasons for not fully crediting his
6 testimony regarding his pre-July 2014 symptoms were not sufficiently clear and
7 convincing.

8 The Commissioner's credibility determination must be supported by
9 findings sufficiently specific to permit the reviewing court to conclude the ALJ did
10 not arbitrarily discredit a claimant's testimony. *Bunnell v. Sullivan*, 947 F.2d 341,
11 345–46 (9th Cir. 1991). Absent affirmative evidence that the claimant is
12 malingering, the ALJ must provide “clear and convincing” reasons for rejecting the
13 claimant's testimony regarding the severity of symptoms. *Reddick v. Chater*, 157
14 F.3d 715, 722 (9th Cir. 1998). An ALJ's failure to articulate specifically “clear
15 and convincing” reasons for rejecting a claimant's subjective complaints is
16 reversible error. *Orn v. Astrue*, 495 F.3d 625, 635 (9th Cir. 2007).

17 In addition to ordinary techniques of credibility evaluation, the ALJ may
18 consider the following factors when weighing the claimant's credibility: the
19 claimant's reputation for truthfulness; inconsistencies either in allegations of
20 limitations or between statements and conduct; daily activities; work record; and
21 testimony from physicians and third parties concerning the nature, severity, and

1 effect of the claimant's alleged symptoms. *Light v. Soc. Sec. Admin.*, 119 F.3d
2 789, 792 (9th Cir. 1997).

3 The ALJ discounted Mr. DesJarlais's credibility based on her conclusion
4 that his testimony regarding symptoms and the degree to which they incapacitated
5 him was "not entirely consistent" with his medical record and that Mr. DesJarlais's
6 daily activities were inconsistent with his allegations.

7 Mr. DesJarlais's testimony indicates that he has carried on his daily
8 activities with difficulty. He stated that "for years" he has experienced two "down
9 days" or "really bad days" approximately every ten days and that he has to
10 "constantly adjust" his position due to "excruciating" back pain and "lie down
11 once every couple hours at least for 15 or 20 minutes . . ." AR 653–54, 665.

12 The Ninth Circuit "has repeatedly asserted that the mere fact that a plaintiff
13 has carried on certain daily activities . . . does not in any way detract from [his]
14 credibility as to [his] overall disability. One does not need to be 'utterly
15 incapacitated' in order to be disabled." *Vertigan v. Halter*, 260 F.3d 1044, 1050
16 (9th Cir. 2001) (quoting *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)).

17 The activities of daily living upon which the ALJ relied to discredit Mr.
18 DesJarlais's testimony do not indicate any pattern of exertion consistent with
19 performing light work. For instance, the ALJ focused her analysis on Mr.
20 DesJarlais's testimony that he flew to Alaska and Hawaii by plane and
21 extrapolated from those statements that such travel "would reasonable [sic] require

1 him to carry luggage; walk substantial distances between airport gates or terminals;
2 and stand in check-in and security line [sic] for significant periods. He would also
3 have to sit on the plane for significant periods.” AR 624. Even if those
4 assumptions were based on material in the record, two trips involving air travel do
5 not translate to the demands of a regular work schedule or environment. Likewise,
6 the ALJ’s focus on Mr. DesJarlais’s testimony that he tries to help his housemates
7 with cleaning, yardwork, and other chores, when he is able, does not undermine his
8 allegations regarding physical incapacity and discomfort.

9 Finally, the ALJ determined that Mr. DesJarlais could not have worked only
10 three weeks as a dump truck driver in Alaska based on inaccurate math. The ALJ
11 started with the proposition that Mr. DesJarlais earned \$23,753 in the fourth
12 quarter of 2013, when the record indicates that he earned \$22,753. AR 812–13.
13 More to the point, the discrepancy that the ALJ identified, that Mr. DesJarlais
14 would have needed to work either seven or eleven weeks to earn that amount rather
15 than the three weeks he had recalled during the hearing, even if true, does not
16 undermine that such work was unsustainable and detrimental to Mr. DesJarlais’s
17 physical condition and does not disturb Mr. DesJarlais’s testimony that he ceased
18 the work when he could no longer physically remove himself from the truck. *See*
19 AR 625.

20 In addition, for the reasons articulated in the medical opinion analysis above,
21 the Court also cannot decipher clear and convincing reasons for the ALJ’s finding

1 that Mr. DesJarlais's allegations were inconsistent with the medical evidence in the
2 record.

3 **C. Whether the Court should remand or reverse and award benefits**

4 A reviewing court that finds reversible error by the ALJ may remand or
5 reverse and award benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir.
6 1989). The reviewing court appropriately may remand for the limited purpose of
7 calculating and awarding benefits where: (1) the record has been fully developed and
8 further administrative proceedings would serve no purpose; (2) the ALJ has failed to
9 provide legally sufficient reasons for rejecting the evidence in question; and (3) if
10 the improperly discredited evidence were credited as true the ALJ would be required
11 to find the claimant disabled on remand. *Garrison v. Colvin*, 759 F.3d 995, 1020
12 (9th Cir. 2014). However, where the record is insufficient to compel a favorable
13 determination, remand for a new hearing is appropriate. *See Benecke v. Barnhart*,
14 379 F.3d 587, 593 (9th Cir. 2004).

15 Plaintiff argues that the Court should apply the three-part "credit-as-true"
16 standard to remand for an immediate award of benefits as of December 31, 2009,
17 Plaintiff's date last insured. The Commissioner responds, in conclusory fashion, that
18 "[e]ven if the ALJ erred, a remand for further proceedings is the appropriate remedy
19 in this case given Plaintiff's lack of credibility." ECF No. 18 at 20 (quoting
20 *Garrison*, 759 F.3d at 1021, for the proposition that remand is appropriate where
21 "the record as a whole creates serious doubt that a claimant is, in fact, disabled.").

1 With respect to whether Mr. DesJarlais has a disability, the only question still
2 remaining at this stage is whether the ALJ appropriately found that he was capable
3 of light work rather than limited to less than the full range of sedentary work. It is
4 undisputed that Mr. DesJarlais could not perform his prior relevant work, so the
5 burden of demonstrating that he could perform other substantial gainful activity was
6 on the Commissioner. *See Kail*, 722 F.2d at 1498. However, as the Court found,
7 there were not clear and convincing reasons stated by the ALJ, or apparent in the
8 record, for finding that Mr. DesJarlais lacked credibility or for discounting his
9 treating physician's opinion that Mr. DesJarlais was unable to meet the demands of
10 sedentary work. Dr. Jackson further opined that Mr. DesJarlais would miss four or
11 more days of work in an average month. AR 1242. The onset of that limitation was
12 "prior to 2010." AR 945–46; *see also* AR 1241–43.

13 In his filings to this Court, Mr. DesJarlais effectively amends his onset date to
14 December 31, 2009, the same day his insured status expired. *See* ECF No. 13 at 21.
15 To avoid the expenditure of resources to rehear a matter in which there already is a
16 sufficient record to support a finding of disability, the Court finds it appropriate to
17 credit Dr. Jackson's opinion as true and remand the proceedings for an immediate
18 award of benefits.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is
3 **GRANTED**, and this matter is **REMANDED** to the Commissioner for an
4 immediate award of benefits based on an onset date of December 31, 2009.

5 2. Defendant's Motion for Summary Judgment, **ECF No. 18**, is
6 **DENIED**.

7 The District Court Clerk is directed to enter this Order, provide copies to
8 counsel, **enter judgment for Plaintiff**, and **close the file** in this case.

9 **DATED** September 15, 2017.

10 _____
11 *s/ Rosanna Malouf Peterson*
ROSANNA MALOUF PETERSON
United States District Judge